

Election 2019: Which Party will Return the Land?

by Hayden King

DESPITE THE ON-GOING handicap of a discriminatory “first past the post” system, limited electoral infrastructure on reserve, a near complete lack of attention paid to Indigenous issues, and the long-standing argument that we shouldn’t participate in selecting our next oppressor, this may be the first federal election I can remember where Indigenous people aren’t debating whether or not to vote.

If there is a legacy of the 2015 federal election campaign, where Indigenous issues were forced into the discussion following Idle No More and the work of the Truth and Reconciliation Commission, perhaps this is it: regular participation in electoral politics.

Indigenous people then registered the **highest voter turn-out** since the prohibition on voting was lifted in 1960. (the NDP captured the largest share of these votes). It appears that First Nation, Metis and Inuk voters may show up again this election.

With each of the parties finally releasing their costed platforms, we have a sense of commitments and can offer some comparisons. Of particular interest is how each of the parties considers the question of land.

That is, are any of the parties planning to give land back?

This Brief represents an overview of each of the major federal parties, as well as their commitments to issues of land restitution, and a more general breakdown of investments (or lack thereof) to Indigenous communities.

THE LIBERAL PARTY OF CANADA

Objectively, it is difficult to ignore the progress Liberals have made: investing in hard services (clean water and housing), following through on the MMIWG Inquiry (despite early attempts to sabotage it), dramatically increasing more face-time for communities with senior bureaucrats and Ministers, re-organizing the machinery of government to more effectively develop policy and deliver services, and introducing a catalogue of legislation and revised policy.

Unfortunately for the Liberals, to the extent that these changes have been positive, they are overshadowed by a long list of broken promises: changing the electoral system, respecting Indigenous decisions on resource development in their territory, pledging to address climate change (and then buying a pipeline), implementing UNDRIP, and so on. Then there are the divisive divide-and-conquer politics they practice under the guise of “distinctions-based policy” and on-going, rock-bottom refusal to reverse the

discrimination of Indigenous children and families in the child welfare system. Also, the [Rights Framework](#).

Earlier this month an Environics poll found that 1 in 5 Indigenous voters are considering voting for the Liberals. A surprisingly high number.

This campaign, the Liberals have wisely backed off the strategy of promising all the things to Indigenous people. Instead they are [advocating](#) for more of what they've already delivered: hard services investments, implementing legislation introduced when in government (from language to child welfare); and a doubling-down on their “distinctions-based” and “co-development” approaches that empowered the national Indigenous organizations (perhaps at the expense of communities).

Regarding land rights, there are actually some new commitments.

- **Re-introduction of Bill C-262, former NDP MP Romeo Saganash's UNDRIP Legislation:** While the Bill is weak on compelling government action on implementing UNDRIP, it could help operationalize some degree of free, prior and informed consent.
- **A new national resource revenue sharing framework:** Something that the Assembly of First Nations, and regional political organizations have long called for, this could see government profits from resource development tax revenue shared with communities.
- **A new National Treaty Commissioner's Office:** A recommendation by the Royal Commission on Aboriginal People (1996), as well as the Land Claims Coalition of Canada in 2008, the Liberals have committed to establishing a federal office to “enforce” treaty obligations.

Remarkably, for all of the above, the Liberals have allocated zero dollars. The extent of their investment in 2020-2021 is 25 million and its targeted for new investments in infrastructure.

In other words, none of the commitments around land rights are matched with corresponding investments.

NEW DEMOCRATIC PARTY

Last week I ran a poll on one of my First Nation's Facebook pages. At the time of writing three-quarters of respondents intend to vote for the NDP, some heralding the arrival of cuzzin' Jagmeet. The NDP campaign is clearly resonating.

Singh's defence of Grassy Narrows' right to clean water, the only anti-racist party of the bunch, a slate of respected Indigenous candidates, and simply the deepest commitment to Indigenous issues, is propelling the popularity.

Reviewing the NDP's [costed platform](#) reveals that new investments for Indigenous communities (in 2020-2021) total more than all of the other parties combined. These investments include:

- Establishing a National Council for Reconciliation and a National day for Truth and Reconciliation (5 million).
- Indigenous languages (350 million)
- First Nations, Métis, and Inuit housing strategies (1.5 billion)
- Lifting drinking water advisories and supporting Indigenous-led water management training programs and water system operations (1.8 billion).
- An Indigenous Climate Action Fund (75 million).
- Treatment centre for Grassy Narrows residents affected by long-term mercury exposure and compensation (98 million).

- Implementing the MMIWG Inquiry’s Calls for Justice, including establishing a comprehensive plan to address violence against Indigenous women, girls and LGBTQI2S+ people (100 million).

There are a range of other commitments not costed specifically to Indigenous issues but affecting communities. These include northern infrastructure funds and expanding broadband, and ending the practice of carding.

The key commitment regarding land restitution in the NDP platform is to “replace mere consultation with a standard of free, prior and informed consent for Indigenous communities affected by government policies – including for all decisions affecting constitutionally protected land rights, like energy project reviews. We are committed to good-faith, consent-based engagement and negotiations consistent with the Tsilhqot’in decision, an approach that honours Canada’s legal and constitutional obligations.”

While this is significant, it raises questions.

Replacing mere consultation would require FPIC legislation, since there is no federal consultation standard beyond direction from the courts. Is that what the NDP means?

Clarity is also required around the distinction between title vs. rights. The Tsilhqot’in decision was specific to those First Nations who have proven title. The vast majority of First Nations are viewed by the courts as having surrendered title or not yet proven it. So it is important that the NDP clarify this approach. And importantly, there is no funding committed to a new FPIC regime.

Beyond this commitment, there is little else on issues of land rights or restitution.

THE CONSERVATIVE PARTY OF CANADA

One of the main drivers of the get-out-the-Native-vote campaign in 2015 was an exhaustion with a decade of Stephen Harper’s hawk-ish Indigenous policies. While the former Prime Minister did apologize for residential schools in the House of Commons, that acquiescence is the end of the list of Conservative accomplishments in their time in power. The Conservative approach was to overtly dismantle Indigenous rights, justice and self-determination while vilifying and surveilling Indigenous leaders.

Has a new leader resulted in a new approach?

Last December, as Sheer was introducing himself to the Assembly of First Nations, he was booed after **failing to answer** how he was different from Harper. In the Spring, Conservative Senators **blocked the passage of C-262**. Fast forward to the first debate of this campaign, and Sheer argued that the UN’s Declaration on the Rights of Indigenous peoples **goes too far**. The answer to this question, then, is no.

With the arrival of an actual **Conservative platform** there are more details. While the focus actually revolves around issues of land, it is less land restitution and more the promotion of relationships between industry and Indigenous peoples in pursuit of resource development. The sole innovation here is the appointment of a Minister “for Consulting Indigenous Rights Holders” to “identify and address concerns” with major projects in their territory and prevent delays on development.

So when it comes to discussions around land rights, the Conservative approach is not about respecting Indigenous jurisdiction or treaty (a word that does not appear in their platform) but rather ensuring consultation obligations are met so that Indigenous people are not a threat to oil, gas and mining interests.

The Conservatives will invest 11 million in 2020-2021 to this end. It comprises the total sum of their new investments. Clean water and action on missing and murdered Indigenous women are mentioned in the platform, but no funds committed.

ISSUE-BASED PARTIES

There are, of course, other options for Indigenous voters.

The Green Party will attract some support for their focus on addressing climate change, which is perhaps the top priority of Indigenous people (and should be for all thinking people). But the Green Party has also **committed** to giving the country back to Indigenous people, promising to repudiate the doctrine of terra nullius, implement RCAP, UNDRIP, the TRC's Calls to Action and the recommendations of the MMIWG Inquiry. Of course in their **costing**, there is little support for any of this.

Credit though, for their relatively unique commitments on suicide prevention, prison rehabilitation, fisheries management and Northern skills training.

The Bloc Quebecois have re-emerged to centre the interests of Quebecers. On Indigenous policy, they've placed a focus is on supporting Indigenous skills training, limited self-government within Quebec, ongoing support of the Paix du Braves Agreements, and the implementation of UNDRIP. None of which appears in the Bloc's costing, what little they provided.

Finally, the People's Party of Canada's issue is white supremacy. There is little else to say.

POST-ELECTION LAND RESTITUTION?

In some ways, the 2019 federal election has offered Canadians a glimpse into why Indigenous people historically haven't voted. A campaign characterized by racism—Trudeau's blackface, attacks on Jagmeet Singh, the legitimization of Maxime Bernier and Rebel media by Crown institutions, and a lack of corresponding policy commitments to address racism—has been widely demoralizing.

Still, we'll see if Indigenous voters have been repelled or build on 2015's participation. If there is a strong turnout, it won't be to vote for a party committed to returning lands and resources or honouring treaties. None exist.